

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CHRISTIAN BRYANT,  
 Petitioner,

vs.

DWIGHT NEVEN , *et al.*,  
 Respondents.

2:15-cv-00486-APG-VCF

**ORDER**

The petitioner has filed a motion for leave to proceed *in forma pauperis* accompanied by a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. He has also paid the required filing fee of \$5.00.

In addition, petitioner has filed a motion for the appointment of counsel. ECF No. 2. Pursuant to 18 U.S.C. §3006A(a)(2)(B), the district court has discretion to appoint counsel when it determines that the “interests of justice” require representation. There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555(1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9<sup>th</sup> Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9<sup>th</sup> Cir. 1986); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9<sup>th</sup> Cir. 1984). However, counsel must be appointed if the complexities of the case

1 are such that denial of counsel would amount to a denial of due process, and where the petitioner is a  
2 person of such limited education as to be incapable of fairly presenting his claims. *See Chaney*, 801  
3 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The petition on file in this  
4 action is sufficiently clear in presenting the issues that petitioner wishes to bring. Also, the issues in  
5 this case are not particularly complex. It does not appear that counsel is justified in this instance.  
6 Petitioner's motion for the appointment of counsel is denied.

7 Because petitioner has paid the required filing fee and the court is denying appointment of  
8 counsel, petitioner's motion for leave to proceed *in forma pauperis* (ECF No. 1) shall be denied as  
9 moot. The court has reviewed the petition pursuant to Habeas Rule 4, and the petition shall be  
10 docketed and served.

11 A petition for federal habeas corpus should include all claims for relief of which petitioner is  
12 aware. If petitioner fails to include such a claim in his petition, he may be forever barred from  
13 seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If  
14 petitioner is aware of any claim not included in his petition, he should notify the court of that as soon  
15 as possible, perhaps by means of a motion to amend his petition to add the claim.

16 **IT THEREFORE IS ORDERED** that petitioner's motion for leave to proceed *in forma*  
17 *pauperis* (ECF No. 1) is DENIED as moot in light of petitioner's payment of the required filing fee.  
18 The Clerk shall FILE the petition for writ of habeas corpus and ELECTRONICALLY SERVE it on  
19 the respondents.

20 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF No.  
21 2) is DENIED.

22 **IT FURTHER IS ORDERED** that respondents shall file a response to the petition,  
23 including potentially a motion to dismiss, within **ninety (90) days** of service of the petition, with any  
24 requests for relief by petitioner by motion otherwise being subject to the normal briefing schedule  
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1 under the local rules. **Any response filed shall comply with the remaining provisions below,**  
2 **which are entered pursuant to Habeas Rule 4.**

3 **IT FURTHER IS ORDERED** that any procedural defenses raised by respondents in this  
4 case shall be raised together in a single consolidated motion to dismiss. In other words, the court  
5 does not wish to address any procedural defenses raised herein either in *seriatum* fashion in multiple  
6 successive motions to dismiss or embedded in the answer. Procedural defenses omitted from such  
7 motion to dismiss will be subject to potential waiver. Respondents shall not file a response in this  
8 case that consolidates their procedural defenses, if any, with their response on the merits, except  
9 pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If  
10 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within  
11 the single motion to dismiss **not** in the answer; and (b) they shall specifically direct their argument to  
12 the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24  
13 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, shall be included with the  
14 merits in an answer. All procedural defenses, including exhaustion, instead must be raised by  
15 motion to dismiss.

16 **IT FURTHER IS ORDERED** that, in any answer filed on the merits, respondents shall  
17 specifically cite to and address the applicable state court written decision and state court record  
18 materials, if any, regarding each claim within the response as to that claim.

19 **IT FURTHER IS ORDERED** that petitioner shall have **thirty (30) days** from service of the  
20 answer, motion to dismiss, or other response to file a reply or opposition, with any other requests for  
21 relief by respondents by motion otherwise being subject to the normal briefing schedule under the  
22 local rules.

23 **IT FURTHER IS ORDERED** that any additional state court record exhibits filed herein by  
24 either petitioner or respondents shall be filed with a separate index of exhibits identifying the  
25 exhibits by number. The CM/ECF attachments that are filed further shall be identified by the  
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1 number or numbers of the exhibits in the attachment. The hard copy of any additional state court  
2 record exhibits shall be forwarded – for this case – to the staff attorneys in **Reno**.

3 Dated this 26<sup>th</sup> day of May, 2015.

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UNITED STATES DISTRICT JUDGE  
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